

Message

From: Malave, Maria [Malave.Maria@epa.gov]
Sent: 9/12/2018 10:59:00 PM
To: Zenick, Elliott [Zenick.Elliott@epa.gov]; Branning, Amy [Branning.Amy@epa.gov]
CC: Anderson, Lea [anderson.lea@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Lischinsky, Robert [Lischinsky.Robert@epa.gov]
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Flag: Follow up

Elliott,

Thank you for following up on Amy's concerns.

I agree that the program offices issuing the determinations (ADs) should be able to review and approve the ADs and abstracts at the same time, which are included in the FRN. However, we are finding that even when the regional program office issuing the ADs should be in the best position to do so, we are finding that there are still time when ADs are being issued inappropriately due to several issues (e.g., not doing proper consultation) as proven by this last review cycle of the FRN for the ADI update.

Please note that we (Amy and I) had a discussion with Ed Messina on whether to eliminate the OGC separate review of the FRN for the ADI update and also on whether we could publish a much shorter FRN with just the AD list and no abstracts about a year ago. Ed deferred the decision on these two recommendations until the OC AD Process LEAN project solutions were completed and we know these are working. We are seeking to complete the LEAN project by late fall.

- The OC LEAN project seeks to streamline the EPA process for addressing applicability determinations and other types of requests (term as "ADs"). We have been implementing short term and long terms solutions that include development of a SOPs for tiering ADs and establishing criteria for consultation and development of resources to provide guidance to staff to ensure providing consistent and appropriate responses in a timely matter.
- I am meeting with Amy next week to discuss the status of this project in more detail.

I understand your point that perhaps there is not a need for OGC (Amy) to continue doing a formal review of the Federal Register Notice (FRN) for the ADI update for the reasons you mentioned, as well as due to the Air Branch implementing an improve QA/QC review process. We have added a new QA/QC step that requires the regional Air Enforcement Managers to confirm to OC senior management if there are any ADs included in the FRN that may have a likelihood of being challenged on its substance or may be viewed as controversial by the regulated community or the public. In addition, we have seek OGC input to address the issues that were identified by the Air Branch staff and the regions during their review. As a result, we have taken out five ADs and related abstracts from the FRN due to different issues as summarized in my email to Amy included below in the email string. The Air Branch staff is following up with the region on those ADs that were issued inappropriately to determine a course of action.

I will seek to further discuss your concerns and recommendation with the MAMPD management to provide a next update.

Regards.

Maria Malave
US EPA Headquarters
Air Branch, MAMPD

Office of Compliance
T & T Phone No: 202-564-7027
M, W & F Phone No: 301-498-6102

From: Zenick, Elliott
Sent: Wednesday, September 12, 2018 9:18 AM
To: Branning, Amy <Branning.Amy@epa.gov>; Malave, Maria <Malave.Maria@epa.gov>
Cc: Anderson, Lea <anderson.lea@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Maria, is there a reason that the abstract for publication is not prepared and reviewed at the same time as the applicability determination is issued? Amy is not the expert and not in a position to substantively review the abstracts for accuracy. The team that prepared the determination is.

Acting Deputy Associate General Counsel – ARLO
(202)564-1822

From: Branning, Amy
Sent: Tuesday, September 11, 2018 3:11 PM
To: Malave, Maria <Malave.Maria@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Maria:

I am including my manager, Elliott Zenick in this email. I have discussed with him in the past that I am not quite sure what I am reviewing for when I review the abstracts of already issued applicability determinations. I am not equipped to detect all problems as I don't know all NSPS and NESHAP subparts. In the past I tried my best and might have found some. It was time consuming. But my bigger concern was that possibly I am giving your office false assurance based on the mere fact that I "reviewed." I am glad and relieved to hear that the process has been revised to now include consultations with relevant OGC attorneys for the subparts at issue. With this additional step, it is unclear that my review of the abstracts is still necessary. But if your office still wants an ARLO person to review the abstracts IN ADDITION to consultation with the relevant ARLO attorneys, it would be helpful to let us to better understand the purpose of this additional review to avoid redundancy.

Amy Huang Branning
EPA Office of General Counsel
phone: (202) 564-1744
fax: (202) 564-5603 or (202) 564-0070

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From: Branning, Amy
Sent: Tuesday, September 11, 2018 2:36 PM
To: Malave, Maria <Malave.Maria@epa.gov>

Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Sounds like my understanding of the new process is incorrect and you still need me to review the abstracts? If so, by quick review, it would be helpful if you can let me know what you would like me to review for. As I mentioned earlier, I am not going to know all the relevant subparts and the provisions therein.

If you need me to do a similar review as I have done in the past, considering pressing litigation and other deadlines right now, I can try to get back to you by end of next week.

Amy Huang Branning
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From: Malave, Maria
Sent: Tuesday, September 11, 2018 2:16 PM
To: Branning, Amy <Branning.Amy@epa.gov>
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Hi Amy,

I understand your point of you. I was sharing the version (attached) that I was planning to send forward for management for your final quick review since we did consult you and Paul in OGC on those ADs with issues raised by the AB staff and the regions.

If you need more time, let me know. Please note that the ADs in the FRN are the ones the regions indicated can be published. I did revise abstracts to make them clearer, but I was limited to what was stated in the actual letter.

Thanks for your support!

Maria

From: Branning, Amy
Sent: Tuesday, September 11, 2018 1:35 PM
To: Malave, Maria <Malave.Maria@epa.gov>
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Maria:

Thank you for answering my questions in the email below. I have no further questions on those bullets. See my response to your email below.

Amy Huang Branning
EPA Office of General Counsel
phone: (202) 564-1744
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From: Malave, Maria
Sent: Tuesday, September 11, 2018 12:15 PM
To: Branning, Amy <Branning.Amy@epa.gov>
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Hi Amy,

Thanks. These ADs were removed for the reasons mentioned in my initial email. I answer your questions (highlighted in blue) in my initial email below. [Thank you. No further questions on those bullets.] Can we talk about this and the AD process lean project and changes? [Yes, send me an invite.]

I am sorry for the misunderstanding. When I send out the initial request to the regions for review of the FRN asking if there were any issues with AD to be published on the ADI, I had also copy you as well since you review for this same purpose. [If you did not ask me directly to review it (and the email was not addressing me directly), I am not going to know you are asking for my review or do something. Further, an email asking regions to review indicates to me that it is not ready for OGC review (if one is needed). Lastly, if my review is needed, it seems to make most sense for me to review the version that you have determined to be ready for OC management, as it would have incorporated all changes by all relevant folks who worked on the determinations or otherwise familiar with the subject matters therein.] Since we now have this additional level of review by regional Air Enforcement Managers and staff, and OGC (you and Paul Versace) was consulted in the process on specific issues when needed, I believe we have completed the substantive review of the FRN and have a final draft version for subsequent review by OC management. [Sounds like under the new process, you will consult with me and other relevant OGC folks on specific matters as appropriate (like your email below) instead of me reviewing the abstracts in the draft FR notice? That works for me. Thanks.]

Maria

From: Branning, Amy
Sent: Friday, September 7, 2018 5:22 PM
To: Malave, Maria <Malave.Maria@epa.gov>
Subject: RE: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Maria:

I have not reviewed the FRN. But I don't think that is what you are asking me to do b/c you could not have meant to just give me couple days to review a draft AD FRN. Sounds like you just want me to see if I am ok with removing the specific AD identified in your email below. Please see response below in individual bullet. I am fine with not including them due to the various issues/reasons described below. If we get sued on any of these, we will deal with it then.

Amy Huang Branning
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From: Malave, Maria
Sent: Wednesday, September 05, 2018 12:03 PM
To: Branning, Amy <Branning.Amy@epa.gov>
Subject: Input-are you ok with revised FRN version? FW: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input
Importance: High

Amy,

I am routing this to OC after AB staff and regional review ending, with your support and that of regional AB. See specific ADs removed from initial version of the FRN. Are you ok with ADs in FRN? Minor edits on abstracts have been done and management may do some more.

Thanks.

Maria

From: Malave, Maria
Sent: Wednesday, August 29, 2018 1:50 PM
To: Branning, Amy <Branning.Amy@epa.gov>
Subject: Recent version of the ADSI update FRN per AB/Regional AEM and staff and OGC input

Amy,

Thanks for the support on the internal QA/QC review of the ADs and related FRN for the ADI update. Based on the review of the FRN by the Air Branch staff and regional program offices (email the FRN 7-31 clean version to regions), and further consultation with OAQPS and OGC as needed, we have agreed to remove the following ADs from the ADI update and related FRN. In addition, we have made a few edits to the FRN to ensure that abstracts are correct and clear. I plan to route the attached FRN to management shortly, but I would like to know if you have any questions.

ADs removed from the ADI FRN and the reason(s):

- Region 3 AD M170018- After consulting with the region and OGC, we agree to remove this AD because it is based on the Once In Always In (OIAI) policy, which has been since then changed per the January 2018 Bill Wehrum memorandum. There is a guidance document being prepared to address whether and how regions should discuss the 2018 Wehrum memo in upcoming ADs. [Per Sonja's email, OK with removing this one]
- Region 5 AD FP00001- After consulting with the region and OGC, we agreed to remove this AMP approval because it is a monitoring plan being proposed in the CISWI Federal Plan, which has not been finalized. [I defer to the OGC attorney with whom you consulted. Per Sara's and Marcia input on 6/8 – Sara indicated: "After consulting with Marcia, OGC (Paul Versace) and R5, we think that FP00001 in the list of items to be sent to the FR for the ADI update should be removed. It concerns alternative monitoring, but is actually not an approval of an AMP because they were requesting something that was already proposed in the CISWI Federal Plan, which has not been finalized. Everyone involved has agreed that we don't want such a document out on the ADI. Let me know if have questions or need anything else"]
- Region 5 AD FP00002- After consulting the region and OAQPS, we agreed to remove this AD approving alternative monitoring parameters under the Part 62 Federal Plan provisions. The response does not contain sufficient detail about the source to correspond to the rule requirements necessary for this type of AD. Additionally, I believed the averaging periods which were proposed and approved in this AD should correspond to the duration of the performance test by pollutant; hence a 12-hour averaging period is too long and not appropriate. The Air Branch is having discussions with Region 5 to determine a course of action. [OK. Is there a plan to issue a revised AD after discussion? I made revisions in blue per Katie Owen input. She and Marcia spoke to the staff person and had an initial call with his manager, but they want more time to review it.]
- Region 5 FP00006- After consulting the region and OAQPS, we agreed to remove this AD for approval of a reduced frequency of performance testing and alternative monitoring method for sewage sludge incineration (SSI) units issued under the Part 62 Federal Plan provisions. The information included in the respond is not sufficient since it does not address previous performance tests data to justify approval of a reduce test schedule of every other year. Additionally, OECA was not consulted in the request for a scenario that is not in the SSI Federal Plan. The Air Branch is having discussions with Region 5 to determine a course of action. [OK. Plan to issue a revised AD after discussion? I made revisions in blue per Katie Owen input. She and Marcia spoke to the staff person and had an initial call with his manager, but they want more time to review it.]
- Region 6 AD 1700043- After consulting the region, we have agreed to remove this AD document at this time. This AD document is a supporting document being referenced as part of an ongoing AMP being reviewed by the region, which has not yet been finalized. [OK]

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